

LPL 001. 0040

JURISDICTION

The following Administrative Order on Consent ("ORDER") is entered into with the above-captioned Respondents pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9606(a), which authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12316, August 20, 1981, 46 Fed. Reg. 42237, and redelegated to the Regional Administrator, Region II. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), the State of New Jersey has previously been notified of this ORDER.

DEFINITIONS

1. As used in this Order, unless otherwise clearly required by context, the following terms shall have the following meanings:

A. EPA shall mean the United States Environmental Protection Agency.

B. DEP shall mean the New Jersey Department of Environmental Protection.

C. RESPONDENTS shall refer to all companies, entities or persons whose names appear in the caption of this Order.

D. LONE PINE LANDFILL or LONE PINE shall mean that property located near Burke Road off Elton - Adelphia Road in Freehold Township, Monmouth County, New Jersey which comprises real property that encompasses Lots 51-54, Block 91.

E. CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., P.L. 96-510.

F. HAZARDOUS SUBSTANCE shall mean any substance that falls within the definition of "Hazardous Substance" set forth at Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

G. DESIGNATED COORDINATOR shall mean the person designated by any Respondent or by Respondents jointly,

which person shall be charged with the duty of at all times being responsible for the performance of all work performed pursuant to this Order.

H. NATIONAL CONTINGENCY PLAN (NCP) shall mean the National Oil and Hazardous Substances Contingency Plan promulgated by EPA pursuant to §105 of CERCLA, 42 U.S.C. §9605, at 40 C.F.R. Part 300, and all amendments or modifications thereto.

I. REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS) shall include the investigation and analyses described in the NCP at 40 CFR §300.68.

EPA FINDINGS OF FACT .

1. Each of the Respondents is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
2. Lone Pine Landfill is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
3. The Lone Pine Landfill operated as a municipal landfill which accepted municipal refuse, septage, and industrial waste, including hazardous substances.
4. Wastes generated by the Respondents and other companies and entities were disposed of at the Lone Pine Landfill and/or were sent to one or more other sites for treatment or disposal and are believed to have been transhipped to Lone Pine for disposal. The waste disposed of at Lone Pine included compounds designated as hazardous substances, including but not limited to: toluene, benzene, methyl ethyl ketone, and lead.
5. Lone Pine Landfill was evaluated for inclusion on

the National Priorities List as required by the NCP for investigation and possible remedial action and has consistently been ranked among the top 20 sites in the country.

6. A geophysical survey and excavation program conducted by EPA confirmed the presence of drums in Lone Pine. Sampling and analysis of these drums identified the presence of hazardous substances.

7. Hydrogeological investigations conducted by EPA identified groundwater contamination emanating from Lone Pine Landfill. Sampling and analysis of groundwater identified, among other constituents, benzene, chlorobenzene, 1,2-dichloroethane, 1,1-dichloroethane, ethylbenzene, 1,2-trans-dichloroethylene, toluene, and vinyl chloride being released into the environment.

8. The chemicals listed in paragraph 7, supra, are all known or suspected carcinogens and are hazardous substances.

9. EPA has conducted a remedial investigation/feasibility study to determine the appropriate remedial alternative for the Lone Pine Landfill. One recommendation of the feasibility study was that additional field investigations be conducted to delineate more precisely the extent of groundwater contamination prior to any decision on off-site remedial action.

10. Upon the basis of the foregoing facts and the entire record in this case, EPA has determined that Respondents are potentially liable parties under Section 107 of CERCLA, 42 U.S.C. §9607 and that the presence of hazardous substances at the facility and their actual and potential migration to the air, surrounding soils, groundwater, and/or surface water

constitutes an actual and/or threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

11. In order to collect further information on the nature and extent of the groundwater contamination problem that may be presented by the release and/or threatened release of hazardous substances from Lone Pine Landfill, and to select an appropriate offsite remedial alternative, a supplemental RI/FS must be conducted in conformance with 40 CFR §300.68.

12. The foregoing Findings have been made by EPA. By consenting to this Order, Respondents do not concede the correctness of any fact alleged in the foregoing findings or elsewhere in this Order. This Order shall not be construed in any way as an admission of any fact or liability by the Respondents. ~~Certain of the Respondents deny that their waste ever went to Lone Pine.~~ Respondents deny that conditions at Lone Pine present or may present an imminent and substantial endangerment to the public health and welfare and the environment within the meaning of §106(a) of CERCLA; however, Respondents agree not to contest the authority or jurisdiction of the Regional Administrator to issue this Order, and also agree not to contest the validity or terms of this Order in any action to enforce its provisions.

DETERMINATION

Based on the findings set forth above and the entire administrative record, and pursuant to Section 106(a) of CERCLA, the Regional Administrator has determined that the release and threatened release of hazardous substances from Lone Pine

SEE ATTACHED
LETTER

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Landfill may present an imminent and substantial endangerment to the public health and welfare and the environment within the meaning of §106(a) of CERCLA, 42 U.S.C. §9606(a).

ORDER

Based upon the information set forth or referred to above, Respondents are ordered, pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), to undertake the following actions concerning the Lone Pine Landfill in accordance with the following schedule:

I. SUPPLEMENTAL REMEDIAL INVESTIGATION

A. Respondents shall perform the RI in conformance with the Operations Plan attached as Appendix I. Unless otherwise directed by EPA, Respondent shall submit a draft report of the RI (the Draft RI Report) within six months of the effective date of this Order. Included in the Draft RI Report shall be an assessment of the public health and environmental risks posed by contamination emanating from Lone Pine. At the minimum, this assessment must include:

1. identification of critical contaminants (which term shall include but not be limited to, contaminants known or suspected to have been disposed of at Lone Pine, most notably volatile organic compounds and heavy metals)
2. identification of human receptors in the paths of

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- contaminant migration; mobility of contaminants and specific routes to target organs (e.g., liver);
3. identification of the receiving media and/or ecological groups and migration pathways of critical contaminants;
 4. toxicology of each critical contaminant (acute and chronic toxicity for short-and long-term exposure, birth defects, carcinogenicity, synergistic and/or antagonistic associations, aquatic toxicity, ecological impacts on flora and fauna, etc.);
 5. migration potential and environmental fate of each critical contaminant in site-specific terms (e.g., attenuation, dispersion and biodegradation are factors in the groundwater pathway); and
 6. evaluation of potential for biomagnification and/or bioaccumulation of critical contamination in the food chain.

B. Respondents shall submit progress reports to EPA on the fifteenth day of every month following the effective date of this Order. The progress reports shall include the results of sampling, analysis, and any other testing, including all raw data and any available QA/QC evaluations with supporting documentation.

C. EPA will review and comment on the Draft RI Report. Unless otherwise agreed upon by EPA, Respondents shall amend the Draft RI Report within 30 days of receipt of such EPA comments as required by those comments and shall promptly submit the modified document to EPA (the Final RI Report). EPA may require the performance of such additional work provided

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that such additional work is necessary and consistent with the provisions of the National Contingency Plan.

EPA will make all determinations regarding the sufficiency of any data and analyses performed as part of the Remedial Investigation and reserves the right to require additional sampling and/or analysis. If additional studies required by EPA's comments are a prerequisite to any amendment to the Draft RI Report, then the 30 day period shall be enlarged as necessary. At such time as EPA determines that the Final RI Report is acceptable, EPA will transmit to Respondents a written statement to that effect.

II. FEASIBILITY STUDY

A. Within 30 days of Respondents' receipt of EPA's written determination that the Final RI Report is acceptable, Respondents shall submit a workplan for the feasibility study (FS Workplan). The workplan for the feasibility study must conform to 40 CFR §300.68 and agency guidance in effect at that time.

B. EPA will review the Respondents' submittal referred to in Paragraph II.A. and comment thereon. Unless otherwise directed by EPA, Respondents shall amend the FS Workplan within 30 days of receipt of the EPA comments as required by those comments and submit the modified document to EPA. EPA will make all determinations regarding the sufficiency of the FS Workplan. While Respondents may evaluate any remedial alternatives they deem to be appropriate, EPA reserves the right to require Respondents to consider additional specific remedial alternatives. At such time as EPA determines that the workplan as

amended by EPA's comments is acceptable, EPA shall transmit to Respondents a written statement to that effect.

C. Within 120 days of Respondents' receipt of EPA's written determination that the original or amended FS Workplan is acceptable, Respondents shall complete those activities specified therein and shall submit to EPA for review an Interim Feasibility Study Report (Interim FS Report). EPA will review and comment on the Interim FS Report. Unless otherwise agreed upon by EPA, Respondents shall within 30 days of receipt of EPA comments amend the Interim FS Report as directed by EPA. Should EPA require any modifications, Respondents reserve their right to comment on or disagree with these modifications. Respondent's comments on any EPA modifications shall be set forth in footnotes in or an appendix to the modified document. Respondent shall immediately submit the modified document to EPA. The Interim FS Report, as amended, also shall contain a conceptual design for the proposed remedial action and shall conform to a format acceptable to EPA. This report shall constitute the Draft Feasibility Study Report (Draft FS Report).

D. Following submittal of the Draft FS Report, EPA will announce the availability of both the Final RI Report and the Draft FS Report to the public for review and comment. Following the public comment period (which may involve both written and oral comments), EPA will determine if the reports should be modified or accepted as submitted, and will so notify the Respondent in writing. Unless otherwise approved by EPA, within 30 days of Respondents' receipt of EPA's written deter-

mination that either the Final RI Report or the Draft FS Report should be modified, Respondents shall modify either or both of the reports as directed by EPA and shall submit the modified document(s) to EPA. EPA policy and guidance in effect at the time such public comment period is initiated shall govern the procedures to be followed. EPA will make all determinations regarding the sufficiency of both the RI and FS Reports.

E. The Final FS Report shall evaluate the alternatives in the FS Workplan in accordance with the National Contingency Plan and EPA policy and guidance in effect at that time. The Final FS Report shall not select a remedial alternative.

F. EPA will make the final selection of the remedial alternative(s) to be implemented.

III. REPORTING

A. Upon request by EPA or DEP, Respondents shall provide EPA, DEP, or their designated representatives with duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this Order.

B. Upon request by EPA, all data and information, including raw sampling and other monitoring data, generated pursuant to this Order by Respondent or on behalf of Respondents, shall immediately be made available to EPA, DEP, or their designated representatives. All such data and information shall be preserved for at least eight years.

C. All records prepared or compiled by Respondents and delivered to EPA in the course of implementing this Order shall immediately be available to the public unless identified as confidential by Respondents in conformance with 40 CFR, Part 2.

(Furthermore, it is understood by the parties that EPA may release all such records to the New Jersey Department of Environmental Protection ("DEP"), and DEP may make those records available to the public unless Respondents conform with appropriate New Jersey law and regulations regarding confidentiality.) Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. Sampling and other monitoring data, and hydrological and geological information, may not be considered confidential.

D. The original and one copy of all submittals required from Respondents under the terms of this Order to be submitted to EPA shall be sent by certified mail, return receipt requested to:

Robert N. Ogg, P.E.
Chief, Site Investigation and Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10278

E. Communications with DEP shall be sent to:

Julian Antebi, Site Manager
Hazardous Site Mitigation Administration
New Jersey Department of Environmental Protection
428 East State Street
Trenton, New Jersey 08625

IV. EPA COMMUNICATIONS AND DECISIONS

A. Written communications from EPA to Respondents shall be sent by certified mail, return receipt requested to Respondents' Designated Coordinator.

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B. All decisions of EPA under this Order, including approvals, disapprovals, grants or denials of requests for extensions of time and requests for modifications of reports, work plans, specifications, schedules, and other work outputs will be communicated in writing to Respondents by Chief, Site Investigation and Compliance Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

C. No informal advice, guidance, suggestions or comments by EPA or DEP regarding reports, plans, specifications, schedules or any other writings submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approvals as may be required by this Order.

V. RESPONDENTS' DESIGNATED COORDINATOR AND
EPA INSPECTION AUTHORITY

A. Within 15 days of the effective date of this Order, Respondents shall provide EPA with the name, title, address, phone number and qualifications of their Designated Coordinator who shall be responsible for oversight of the implementation of this Order, including all activities required herein. The Designated Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. All correspondence and other writings from EPA to Respondents shall be made available to the Designated Coordinator. Respondents shall have the right to change their Designated Coordinator at any time. However, Respondents shall notify EPA in writing at least five working days prior to any such change. If such advance notice is not feasible, notice

shall be given by the best means and as far in advance as possible under the circumstances.

B. EPA, DEP, and their designated representatives, including but not limited to their employees, agents, contractors and consultants, shall have authority to observe the work being carried out pursuant to this Order, for the purposes of inspecting and observing Respondents' progress in implementing the requirements of this Order, or for the purpose of verifying the data submitted to EPA or DEP by Respondents concerning such implementation. To the maximum extent possible under the law, Respondents shall forthwith honor all requests by EPA, DEP, or their designated representatives, to observe the work being carried out pursuant to this Order and also, at reasonable times, shall permit such persons to inspect and copy all writings, including all data, in any way pertaining to work undertaken pursuant to this Order. Respondents shall not be required to permit anyone who is not bound by EPA's confidentiality regulations to inspect or copy any writing which is entitled to confidential treatment under Title 40 CFR Part 2. Notwithstanding the above, EPA hereby retains all its inspection authority under CERCLA and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. Any EPA contractor and its representatives shall be eligible to be designated representatives of EPA under this Paragraph.

VI. ENFORCEMENT ACTIONS

A. In the event that Respondents fail to adhere to any

requirement of this Order; or, notwithstanding compliance with the terms of this Order, upon the occurrence or discovery of a situation as to which EPA would be empowered to take any further response action, EPA may, after reasonable notice to Respondents, institute federally funded response activities and subsequently pursue cost recovery actions available, and/or EPA may issue orders to any or all of the Respondents pursuant to available statutory authority.

B. EPA reserves its right to bring an action against any or all of the Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any costs incurred in oversight of Respondents' implementation of this Order, and any other costs incurred by EPA in connection with investigative or response activities at the site (to include all costs associated with EPA's performance of the RI/FS or any part thereof, in the event that Respondents fail to complete the RI/FS in conformance with the requirements of this Order).

C. Notwithstanding any other provision of this Order, EPA reserves the power to take enforcement actions, including actions for monetary penalties, for any violation of law or this Order. Such enforcement actions may include, though need not be limited to, actions, pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), seeking up to \$5000 per day in penalties for any willful violation or any failure or refusal of Respondents to comply with this Order or any portion hereof. Failure to comply with this Order or any portion without sufficient cause also may subject Respondents to an action under Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), for

punitive damages in the amount of three times the total of all costs incurred by the government as a result of Respondents' failure.

D. If Respondents fail, without prior EPA approval, to adhere to any deadline (set forth in paragraphs I and II of this Order) for the performance of the tasks identified below in Table A, all or each of the Respondents shall pay a stipulated penalty for each day such failure continues as provided in Table B below:

TABLE A

Tasks Subject to Stipulated Penalties

- Submission of the Draft RI Report
- Amendment of the Draft RI Report and Submission of the Final RI Report
- Submission of the FS Workplan
- Amendment of FS Workplan
- Submission of the Interim FS Report
- Amendment of the Interim FS Report
- Submission of the Draft FS Report
- Modification of the Final RI Report and Draft FS Report

TABLE B

<u>Period of Delay</u>	<u>Stipulated Penalty Per Day</u>
1 to 5 days	\$ 0.00
6 to 10 days	\$400.00 (total due from Respondents collectively)
11 to 30 days	\$800.00 (total due from Respondents collectively)
31 to 45 days	\$250.00 (due from each Respondent)
After 46 days	\$500.00 (due from each Respondent)

Any such penalty shall accrue as of the sixth day after the applicable deadline has passed and shall be due and payable 10 days following receipt of a written demand by EPA or, if no such demand is received, on the thirtieth day following the date the penalty accrues, and shall be due and payable every thirtieth day thereafter. Payment of any such penalty to EPA shall be made by certified check payable to the EPA, Hazardous Substances Response Trust Fund, and mailed to the following address with a notation of the docket number of this Order:

EPA - Region II
Regional Hearing Clerk
P.O. Box 360188M
Pittsburgh, PA. 15251

VII. GENERAL PROVISIONS

A. This Order shall be effective on the third working day following the date on which it is signed by the Regional Administrator.

B. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

C. All actions performed by Respondents in implementing this Order shall be in compliance with all applicable federal, state, and local laws and regulations, including but not limited to the National Contingency Plan found at 40 CFR Part 300 (exclusive of the cost balancing provisions of Title 40 CFR §300.68(k)). Respondents shall be responsible for obtaining all necessary permits, licenses and other authorizations. In the event that Respondents shall at anytime be unable to gain

access to Lone Pine necessary to carry out any task required by this Order or shall be unable to obtain any necessary permit, license or authorization required in order to lawfully carry out any task required by this Order, EPA will, if appropriate, issue the necessary orders giving Respondents the necessary access and EPA will, if appropriate, help expedite the necessary permits, licenses or authorizations.

D. All sampling and analyses shall conform to EPA Quality Assurance/Quality Control procedures as directed by the EPA and in conformance with Section 10 of the EPA publication entitled "Test Methods for Evaluating Solid Waste" (SW-846 July, 1982 or as updated). Except as may otherwise be directed by EPA, Respondents shall use Chain of Custody Procedures as set forth in Section 1.3 of SW-846.

E. Respondents shall inform EPA and DEP of all field activities to be conducted not less than ten working days prior to initiation of such activity.

F. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government nor any agency thereof be held out as a party to any contract entered into by Respondents in carrying out activities pursuant to this Order.

G. This Order shall apply to and be binding upon Respondents.

H. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties. Nothing in this Order constitutes a decision on pre-authorization of funds under Section 111(a)(2) of CERCLA.

I. Respondents' activities under this Order shall be performed within the time limits set forth herein unless performance is delayed by events which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond Respondents' control. Respondents shall verbally notify EPA as soon as possible following Respondents' awareness that circumstances constituting a force majeure have occurred or are likely to occur. In addition, Respondents shall notify EPA in writing as soon as possible but not later than ten (10) days after Respondents become aware that circumstances constituting a force majeure have occurred. Respondents shall have the burden of proving that any failure to comply with any requirement of this Order is excused by this paragraph.

J. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order. Respondents shall provide written notification to EPA of any circumstances which have caused or which Respondents believe are likely to cause a delay in performance. Such written notice: (1) shall be provided as soon as possible, but not later than ten days after the date when

Respondents knew or should have known of the occurrence of such circumstances; (2) shall be accompanied by all available documentation, including but not limited to third party correspondence; and (3) shall include (a) a description of the circumstances causing or potentially causing the delay; (b) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and (c) the date by which or time period within which Respondents propose to complete delayed activities. Such notification does not relieve the Respondents of any obligation under this Order.

K. This Consent Order may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by EPA.

L. Respondents' consent to this Order shall not be construed as a waiver of any defenses which Respondents may wish to raise in any other proceedings, and nothing contained in this Order shall constitute an admission by Respondents with respect to any factual or legal matter. However, Respondents agree not to contest the authority or jurisdiction of the Regional Administrator to issue this Order, and also agree not to contest the validity or terms of this Order in any action to enforce its provisions.

VIII. NCP CERTIFICATION

Upon satisfactory completion of the RI/FS, EPA agrees to certify the work as being consistent with the National Contingency Plan.

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U.S. ENVIRONMENTAL PROTECTION AGENCY

Christopher J. Daggett
CHRISTOPHER J. DAGGETT
Regional Administrator

September 27, 1985
Date

U.S. Environmental Protection Agency
Region II

CONSENT

Respondents have had an opportunity to confer with EPA and to state any objections they may have had with respect to the contents of this Order. Respondents hereby consent to the issuance of this ORDER and to its terms.

COMPANY NAME

Minnesota Mining and
Manufacturing Co.

Randy M. Mott
Signature

Randy M. Mott, Attorney
Name and Title of
Person Signing
for Company

August 23, 1985
Date